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SENATE BILL 176

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO COURTS; ESTABLISHING MAXIMUM BOND AMOUNTS ON
APPEALS BY SIGNATORIES OF THE TOBACCO MASTER SETTLEMENT
AGREEMENT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 39-3-22 NMSA 1978 (being Laws 1917,
Chapter 43, Section 17, as amended) is amended to read:

"39-3-22. SUPERSEDEAS AND STAY IN CIVIL ACTIONS-- MAXIMUM
BOND AMOUNT FOR SOME LITIGANTS. --

A. There shall be no supersedeas or stay of
execution upon any final judgment or decision of the district
court in any civil action in which an appeal has been taken or
a writ of error sued out unless the appellant or plaintiff in
error, or some responsible person for him, within sixty days
from the entry of the judgment or decision, executes a bond to

underscored material = new
[bracketed material] = delete

1 the adverse party in double the amount of the judgment
2 complained of, with sufficient sureties, and approved by the
3 clerk of the district court in case of appeals or by the clerk
4 of the supreme court in case of writ of error. The bond shall
5 be conditioned for the payment of the judgment and all costs
6 that may be finally adjudged against him if the appeal or writ
7 of error is dismissed or the judgment or decision of the
8 district court is affirmed. The district court, for good cause
9 shown, may grant the appellant not to exceed thirty days'
10 additional time within which to file the bond, and a like
11 extension of time may be granted by the supreme court in cases
12 of writs of error upon a like showing.

13 B. If the decision appealed from, or from which a
14 writ of error is sued out, is for a recovery other than a fixed
15 amount of money, the amount of the bond, if any, shall be fixed
16 by the district court if an appeal is taken or, in case of a
17 writ of error, by the chief justice or any justice of the
18 supreme court, conditioned that the appellant or plaintiff in
19 error shall prosecute the appeal or writ of error with
20 diligence and that if the decision of the district court is
21 affirmed or the appeal or writ of error is dismissed, he will
22 comply with the judgment of the district court and pay all
23 damages and costs finally adjudged against him in the district
24 court and in the supreme court or court of appeals on the
25 appeal or writ of error, including any legal damages caused by

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1 taking the appeal, whether the damages are assessed upon motion
2 in the cause or in a civil action on the bond.

3 C. In any civil action involving a signatory, a
4 subsequent signatory or a successor or affiliate of a signatory
5 or subsequent signatory to the master settlement agreement
6 defined in Subsection E of Section 6-4-12 NMSA 1978, the
7 supersedeas bond to be furnished during the pendency of all
8 appeals or reviews in that action shall be no more than twenty-
9 five million dollars (\$25,000,000) for those signatory
10 appellants or their successors or affiliates collectively,
11 regardless of the value of the judgment; provided, however,
12 that if an appellee proves by a preponderance of the evidence
13 that an appellant is dissipating assets outside the ordinary
14 course of business in order to avoid payment of the judgment,
15 the court may require the appellant to post a bond in an amount
16 up to the amount required pursuant to Subsections A and B of
17 this section.

18 [~~C.~~] D. Upon approval of a bond provided for in
19 this section and upon filing the bond, in case of appeal with
20 the clerk of the district court and in case of writ of error
21 with the clerk of the supreme court, there shall be a stay of
22 proceedings in the action until the appeal or writ of error is
23 finally determined.

24 [~~D.~~] E. In all cases where an appeal has been taken
25 or a writ of error sued out against any interlocutory judgment,

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1 order or decision of the district court from any final order
2 affecting a substantial right made after entry of a final
3 judgment or from any proceeding or conviction of civil
4 contempt, supersedeas may be granted under the provisions of
5 this section, but the bond shall be filed within thirty days
6 from the entry of such judgment, order, decision or conviction
7 and no extension of time for the filing of the bond shall be
8 granted in excess of ten days.

9 [E-] F. Any supersedeas granted under this section
10 in any matter appealed to the supreme court or court of appeals
11 shall automatically continue in effect pending any action or
12 further review [~~which~~] that may be taken in the supreme court
13 or court of appeals. "

14 Section 2. APPLICABILITY. --The provisions of Section 1 of
15 this act shall apply to any action pending or filed on or after
16 the effective date of this act.

17 Section 3. EMERGENCY. --It is necessary for the public
18 peace, health and safety that this act take effect immediately.